

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD J. ERVIN and U.S. POSTAL SERVICE,
HYDE PARK STATION, Chicago, IL

*Docket No. 98-2560; Submitted on the Record;
Issued August 10, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on August 15, 1997 causally related to his November 1, 1995 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to establish that he sustained a recurrence of disability on August 15, 1997 causally related to his November 1, 1995 employment injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.² Where no such rationale is present, the medical evidence is of diminished probative value.³

On November 1, 1995 appellant, then a 46-year-old mail carrier, sustained an injury in the performance of duty. By letter dated June 4, 1996, the Office of Workers' Compensation Programs advised appellant that it had accepted as employment related the condition of temporary aggravation of impingement syndrome of the left shoulder, resolved as of March 15, 1996.

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

² *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

On August 18, 1997 appellant filed a claim for a recurrence of disability on August 15, 1997 which he attributed to his November 1, 1995 employment injury. By decision dated November 26, 1997, the Office denied appellant's claim for a recurrence of disability on the grounds that the evidence of record failed to establish that his claimed recurrence of disability was causally related to his November 1, 1995 employment injury.⁴

In notes dated October 13, 1997, Dr. Brian J. Cole, appellant's attending orthopedic surgeon, related that he last saw appellant on August 29, 1997 when he had complaints of acromioclavicular joint pain and trapezial spasm. However, Dr. Cole did not indicate the cause of the condition. Therefore, this report does not establish that appellant sustained a recurrence of disability on August 15, 1997 causally related to his November 1995 employment injury.

In a report and notes dated November 7, 1997, Dr. Cole stated that appellant had high grade impingement syndrome in his left shoulder and should perform only light-duty work until his shoulder problem could be resolved. He related appellant's statement that he had a history of left shoulder pain that was not particularly symptomatic until the previous month or so when it became increasingly painful for appellant to perform all activities, especially those which required reaching overhead. However, Dr. Cole did not provide an opinion as to the cause of the condition and therefore this evidence does not discharge appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁵ Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability on August 15, 1997 was causally related to the accepted November 1, 1995 employment injury and therefore the Office properly denied his claim.

⁴ The Board notes that the case contains evidence submitted subsequent to the issuance of the Office's November 26, 1997 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

⁵ *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The November 26, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
August 10, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member